



DATE: April 18, 1989  
CASE NOS: 88-INA-47  
88-INA-160

IN THE MATTERS OF

MOTOROLA, INC.,  
Employer

and

KUEI-WU HUANG

CIARAN THOMAS CORNELL  
Aliens

BEFORE: Litt, Chief Judge; Vittone, Deputy Chief Judge;  
and Brenner, Tureck, Guill and Williams,  
Administrative Law Judges

JEFFREY TURECK  
Administrative Law Judge

### ORDER OF REMAND

On December 21, 1988, Employer's motion to consolidate these cases for hearing was granted because they raised the identical issue. In both cases, certification was denied because several job applicants met the only requirement for the positions listed in Boxes 14 and 15 of the application for certification, Form ETA 750-A. These parts of the Form ETA 750-A list the minimum education, training, experience, and other special requirements for the job being offered.<sup>1</sup> Employer had found none of the applicants in either case to be qualified because, while conceding that several applicants met the minimum job requirements set out in Boxes 14 and 15, none of the applicants allegedly had the experience to perform the job duties listed in Box 13 of the applications.

On January 20, 1989, the U.S. Court of Appeals for the Fifth Circuit, the Circuit in which the cases under consideration arise, issued its decision in Ashbrook-Simon-Hartley v. McLaughlin, 863 F.2d 410 (5th Cir. 1989) ("Ashbrook"). In that case, the Court, citing 20 C.F.R. §656.24(b)(2)(ii), adopted the position advanced by the Employer in the cases before us, i.e., that

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<sup>1</sup> The education, training, experience and "other special requirements" set out by the Employer on the application will be jointly referred to as the "job requirements."

in determining whether a U.S. worker is qualified to perform a job for which certification is sought, it is not enough that the U.S. worker meets the job requirements set out in the application for certification. Whether the U.S. worker is capable of performing the job duties listed on the application must be addressed as a separate issue.

In both cases before us, the CO failed to separately consider whether the U.S. workers who met the job requirements were capable of performing the job duties. Instead, he found that these workers automatically qualified for the job because they met Employer's job requirements. Since this case arises in the Fifth Circuit, we must follow Ashbrook. Accordingly, we hold that the CO decided these cases under an incorrect standard, and failed to address the determinative issue. Therefore, we must vacate the CO's denial of certification in these cases, and remand them to the CO for consideration under the standards set out in Ashbrook.

### ORDER

The decisions of the CO denying certification are vacated, and the cases are remanded to the CO for further consideration in accordance with this decision.

JEFFREY TURECK  
Administrative Law Judge

JT/jb